From: Nick mckinney
To: Microsoft ATR
Date: 1/23/02 12:50pm
Subject: Microsoft Settlement

I have some comments regarding the proposed Microsoft settlement that I would like to share.

In paragraphs D and E under Prohibited Conduct, the settlement states that Microsoft must make available "the APIs and related Documentation" and "Communications Protocols". This is good, but, if I'm reading it correctly, paragraph I (the paragraph about the licensing terms) leaves out one very important group: the open source programmers. The settlement in no way guarantees that any intellectual property licensed from Microsoft can be included in any open source software.

Two things prevent this. One is allowing Microsoft to collect a royalty for use of its intellectual property. The other is that "an ISV's, IHV's, IAP's, ICP's, or OEM's right may be conditioned on its not assigning, transferring or sublicensing its rights under any license granted under this provision". The very nature of open source software requires the source code written to be made publicly available, but this might qualify as transferring the IP license to anyone who receives the source code.

I have no problem with Microsoft collecting a royalty if the end product that uses Microsoft's IP is sold for a profit. However, if all of the IP is licensed to organizations or people who are able to abide by the proposed licensing requirements, it leaves open source software with no way to interoperate with Microsoft's products, which is the whole point of requiring that Microsoft license its IP. If Microsoft is allowed to remain a controlled monopoly, then any organization that wishes to compete on equal ground with Microsoft must be able to write software that interoperates with Microsoft's software. I think all programmers, including open source programmers, should be guaranteed the ability to compete with Microsoft on equal ground.

Nick McKinney